TAMILARASEN MOHAN v. PP

COURT OF APPEAL, PUTRAJAYA
AZMAN ABDULLAH JCA
NOORIN BADARUDDIN JCA
MOHD RADZI ABDUL HAMID JCA
[CRIMINAL APPEAL NO: B-05(SH)-24-01-2025]
22 OCTOBER 2025

Abstract – *In drafting grounds of decision, great care must be taken to ensure the correct facts are put into perspective since all deliberations and findings will ultimately affect the fate of the accused person. In criminal trials, more so when it involves capital punishment, the life and death of an accused person greatly depend not only on the critical evaluation of all evidence but also on the words chosen and put together by the trial judge to correctly and accurately convey that evaluation and ultimately his or her decision. A failure of duty by the trial judge to evaluate the correct facts and evidence, not only in the process of decision-making but ultimately in the decision itself, can cause injustice to the accused.*

CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 39B – Offence of trafficking – Appeal against conviction and sentence – Trial judge confused facts in present case with different unrelated case in grounds of judgment – Whether there was misdirection and error on finding of material facts – Whether injustice caused to accused – Whether there was clear failure of duty by trial judge in evaluating correct facts and evidence in process of decision-making – Whether conviction and sentence ought to be set aside*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Charge of trafficking – Trial judge confused facts in present case with different unrelated case in grounds of judgment – Whether there was misdirection and error on finding of material facts – Whether injustice caused to accused – Whether there was clear failure of duty by trial judge in evaluating correct facts and evidence in process of decision-making – Whether conviction and sentence ought to be set aside*

CRIMINAL PROCEDURE: *Trial – Duty of trial judge – Grounds of decision – Trial judge confused facts in present case with different unrelated case in grounds of decision – Whether there was misdirection and error on finding of material facts – Whether there was clear failure of duty by trial judge in evaluating correct facts and evidence in process of decision-making – Whether trial judge ought to ensure proper facts conveyed in grounds of decision – Whether manifest and serious errors affected credibility and reliability of decision of trial judge*

The appellant was charged with an offence of trafficking 111.32g of methamphetamine under s. 39B of the Dangerous Drugs Act 1952 ('DDA'). On 7 July 2022, at 1.40pm, the complainant ('SP2') and his team of police officers had observed movement of traffic at Jalan Damar, Pelabuhan Klang. After about ten minutes, they saw the accused riding a motorcycle and stopping at the side of the road. The complainant and his team then approached the accused, and the accused attempted to flee the scene. The motorcycle then collided with another vehicle and the accused fell. The accused was apprehended and a search of the motorcycle led to the discovery of a brown paper bag with the words 'Aiza 12' written on it in the front basket of the motorcycle. In that brown paper bag were 12 translucent plastic packets containing substances suspected to be the drug 'syabu'. The accused was then arrested together with the brown paper bag, and its contents were brought to the police station to be processed. The 12 packets containing substances were sent to the chemist for analysis and were later confirmed to be methamphetamine with a total net weight of 111.32g. In arriving at her decision at the end of the prosecution's case, the High Court Judge ('HCJ') found on the element of possession that the accused was alone when he was riding the motorcycle, there was sufficient proximity between the accused and the brown paper bag which contained the drugs, there was an attempt by the accused to escape arrest which pointed to his knowledge of the drugs and there was no failure by the prosecution in proving its case when the accused's wife Pritiba who was the registered owner of the motorcycle was not called as a witness. On the act of trafficking, the HCJ found that there was actual trafficking of the drugs based on the act of transporting as provided under s. 2 of the DDA. At the end of the defence case, the HCJ disbelieved the accused's version of the case because he merely denied any knowledge of the drugs and he failed to rebut the presumption of knowledge. The HCJ then concluded that the accused failed to raise any reasonable doubt on the issue of possession and trafficking. The accused was convicted and sentenced to 30 years of imprisonment and 12 strokes of whipping. Hence, this appeal by the accused. At the hearing of the appeal, the accused focused his arguments mainly on the issue that there was a misdirection and error on the finding of material facts when the HCJ had confused the facts in the present case with a different unrelated case. The accused pointed out a series of errors that were made by the HCJ in her grounds: (i) at para. 8 on the background facts of the case, the HCJ had stated that the case involved two types of dangerous drugs which were methamphetamine with a net weight of 73.91g and heroin with monoacetylmorphines with a net weight of 2.25g when the present case only involved one type of dangerous drug which was methamphetamine with a net weight of 111.32g; (ii) at para. 26, the HCJ described the drugs as having been found in the trousers worn by the accused and in a bag when the drugs were actually found in a brown paper bag in the front basket of the motorcycle; and (iii) the HCJ's finding at that paragraph

had led the HCJ to an erroneous finding in the act of trafficking under s. 2 of the DDA when her mind was focused on drugs allegedly found in the accused's trousers and bag when they were actually found in a brown paper bag in the basket of the motorcycle; and (iv) at para. 40, on the pronouncement of decision after the conclusion of the trial, the HCJ stated that after evaluating the evidence of the defence, she found that the accused had failed to raise a reasonable doubt on the issue of possession under the 'three charges' when there was only one charge in the present case.

Held (setting aside conviction and sentence)
Per Mohd Razi Abdul Hamid JCA delivering the judgment of the court:

(1) The trial court must direct its attention to all the facts and evidence presented in the case. There must be attention to detail, accuracy and relevance. The facts must be evaluated in its proper context, and it is not the function of the court to indulge in speculation or conjecture without proper consideration of the evidence. Whilst there could have been a genuine mistake committed by the HCJ when she perhaps blindly copied and pasted the prosecution's version of facts at para. 8 onto her grounds, that mistake could not, however, escape criticism. The setting out of the correct background of facts in a written grounds of decision is as important as any other part of the decision where the evaluation of facts are done. An elucidation of the background facts sets the basis upon which the entire case and all its evidence are considered and it indicates the trial judge's understanding and focus on the case before her. Thus, to confuse the facts of a case with some other unrelated case would suggest that the HCJ did not properly address her judicial mind to the case beforehand before commencing with her evaluation of the evidence. (paras 21 & 24)

(2a) As regards to para. 26 of the HCJ's grounds, the evaluation of facts there had no place at all in this case. The prosecution's version of the arrest was that the drugs were found in a brown paper bag in the basket of the motorcycle and not on the body of the accused and in a bag. In preparing her grounds of decision, the HCJ's mind and attention had steered away from the facts of the case to some other unknown case. The HCJ failed to detect this glaring anomaly when signing off on the decision. The HCJ should have carefully proofread the entire draft to check for mistakes before signing off on the decision. The fact that para. 26 was constructed as it was and remained so in the final and signed copy of the grounds suggested that she failed to do so. (para 25)

(2b) Paragraph 26 brings about a material contradiction in the HCJ's overall evaluation of the facts and had prejudiced the accused since her finding at that paragraph was that the drugs were found on the accused's body. Although the HCJ had made correct reference and

A evaluation to the facts of the case at no less than seven other parts of the grounds, yet there stood an evaluation and finding of facts totally unrelated to the case thereby presenting two conflicting scenarios in the same judgment. The nature of the error committed here was not one that could be considered as immaterial or as a mere oversight. B Here, the error was on the finding of drugs on the accused's body which would have naturally impacted the HCJ's mind on the finding of possession. In fact, the HCJ went on to find that since the drugs were found on the accused's body and in a bag, the accused had met the threshold on the meaning of trafficking under s. 2 of the Act. This C manifest and material error amounted to a clear misdirection of crucial facts and had caused injustice to the accused. (paras 26-28)

(3) The accused here was charged with only a singular offence, not three. What three charges the HCJ was referring to remain unclear. What was clear was that the three charges could not refer to the present case. D Again, had the HCJ undertaken proper review of her draft, the HCJ would have found that this conclusion was not grounded on any facts in the case. This reflected a failure in the discharge of her duty as a trier of fact to undertake a proper, adequate and accurate judicial appreciation of the facts and evidence. Ultimately, the HCJ's decision E to convict and sentence the accused on three offences was totally baseless and divorced from the case before her. (para 30)

(4) Great care must be taken to ensure that in drafting grounds of decision, the correct facts are put into perspective since all deliberations and findings will ultimately affect the fate of the accused person. It would F not be an exaggeration to state that in criminal trials, more so where it involves capital punishment, the life and death of an accused greatly depends not only on the critical evaluation of all evidence but also on the words chosen and put together by the trial judge to correctly and accurately convey that evaluation and ultimately his or her decision. G In the present case, the manifest and serious errors had affected the credibility and reliability of the HCJ's decision and had denied the accused an evaluation of the case in accordance with the law. (paras 31-32)

(5) The failure here was fundamental. Although there were discussions H and evaluation of evidence related to the present case, yet the fact that the evaluation was caught intertwined with some unrelated facts and finally a decision to convict the accused was made based on the accused's failure to raise reasonable doubts on the three charges amounted to a serious misdirection. There was a clear failure of duty I by the HCJ to evaluate the correct facts and evidence, not only in the process of decision-making but ultimately in the decision itself. (para 34)

Case(s) referred to:
Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***
Ahmad Najib Aris v. PP [2009] 2 CLJ 800 FC ***(dist)***
Deepanraj Subramanian v. PP [2015] 3 CLJ 439 CA ***(refd)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 FC ***(refd)***
Magendran Mohan v. PP [2011] 1 CLJ 805 FC ***(refd)***
Md Zainudin Raujan v. PP [2013] 4 CLJ 21 FC ***(refd)***
Noor Azman Abidin v. PP [2014] 1 CLJ 58 CA ***(refd)***
Norisman Rozali v. PP [2014] CLJU 1202; [2014] LNS 1202 CA ***(refd)***
PP v. Azilah Hadri & Anor [2015] 1 CLJ 579 FC ***(dist)***
PP v. Sah Chin Chong [2018] CLJU 682; [2018] 1 LNS 682 CA ***(refd)***
Roichan Maasum v. PP [2022] CLJU 129; [2022] 1 LNS 129 CA ***(dist)***
Tompo Yara v. PP [2017] CLJU 89; [2017] 1 LNS 89 CA ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(d), 39B

For the appellant - N Sivananthan Nithyanantham & Nurul Nabilah Habibu; M/s Sivananthan Advocs
For the respondent - Shamala Jaganathan; AG's Chambers

[Editor's note: For the High Court judgment, please see PP lwn. Tamilarasen Mohan [2025] CLJU 657 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Radzi Abdul Hamid JCA:

Introduction

[1] This is a decision on an appeal brought by the appellant ('accused') who was convicted at the end of a full trial for an offence of trafficking 111.32g of methamphetamine under s. 39B of the Dangerous Drugs Act 1952 ('DDA') and sentenced to 30 years of imprisonment and 12 strokes of whipping. His appeal is against both conviction and sentence ('appeal').

[2] His main complaint is on the evaluation and findings of facts by the learned High Court Judge ('judge'). He contends that the judge's deliberations and final finding in her grounds of judgment dated 13 January 2025 ('grounds') was riddled with a number of material errors on matters of fact which pointed to the probability that the judge may have confused the facts of the present case with that of some other and unrelated case. The judge had committed serious misdirections of fact, and for that reason the decision to convict the accused should be set aside.

[3] After hearing the arguments, we were in unanimous agreement with the accused that the grounds contained material misdirections on findings of facts which had prejudiced the accused, thereby rendering unsafe the judge's decision to convict and sentence the accused. For that reason, we decided to set aside the conviction and sentence.

[4] We set out our reasons below. Parties will be referred to as how they appeared at the trial.

Background

[5] The facts of the case are fairly straightforward. Firstly, the charge ('charge') which reads as follows:

> Bahawa kamu pada 7 Julai 2022 jam lebih 1.40 petang di tepi Jalan Damar, Kampung Pendamar, Pelabuhan Klang, di dalam daerah Klang, di dalam negeri Selangor Darul Ehsan, kamu mengedar dadah berbahaya jenis Methampetamine sejumlah berat bersih 111.32 gram. Oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[6] Next, the facts of arrest. On 7 July 2022 at approximately 1.40pm, the complainant (SP2) and his team of police officers had observed movement of traffic at Jalan Damar, Kampung Damar, Pelabuhan Klang. After about ten minutes, they saw the accused riding a Honda RS 150 motorcycle bearing registration number VFV 5735. The motorcycle stopped at the side of that road. The complainant and his team then approached the accused and the accused attempted to flee the scene. The motorcycle then collided with a Mitsubishi Triton and he fell. The accused was apprehended and a search of the motorcycle led to the discovery of a brown paper bag with the words "Aiza 12" written on it (exh. P14) in the front basket of the motorcycle.

[7] In that brown paper bag were 12 translucent plastic packets containing substances suspected to be the drug "syabu" with an approximate gross weight of 193g (exh. P9A(1-13)). The accused was then arrested together with the brown paper bag and its contents and brought to the police station to be processed.

[8] The 12 packets containing substances, were sent to the chemist for analysis. Those substances were later confirmed to be methamphetamine with a total net weight of 111.32g. The chemist report was marked as exh. P8.

Decision Of The Trial Judge

[9] In arriving at her decision at the end of the prosecution's case, the judge had found on the element of possession that the accused was alone when he was riding the motorcycle, there was sufficient proximity between the accused and the brown paper bag which contained the drugs. There was an attempt by the accused to escape arrest, which pointed to his knowledge of the drugs and there was no failure by the prosecution in proving its case when the accused's wife, Pritiba who is the registered owner of the motorcycle was not called as a witness. On the act of trafficking, the judge found that there was actual trafficking of the drugs based on the act of transporting as provided under s. 2 of the DDA.

[10] At the end of the defence case, the judge disbelieved the accused's version of the case when he merely denied any knowledge of the drugs, there was no evidence to show that Pritiba had used the motorcycle or placed the brown paper bag in the basket before it was used by the accused, there was no evidence regarding 'Aiza'. In her cautioned statement (exh. P27), Pritiba denied any knowledge of the brown paper bag and use of the motorcycle and the accused failed to rebut the presumption of knowledge. The judge then concluded that the accused failed to raise any reasonable doubt on the issue of possession and trafficking.

Issues

[11] In his appeal, the accused raised the following issues: (i) that the judge had confused the facts in the present case with a different unrelated case; (ii) the judge failed to refuse the admission of hearsay evidence by SP2 who had testified that the arrest was made following a tip-off; (iii) the judge had misdirected herself on the finding of knowledge when she applied the presumption of knowledge under s. 37(d) of the DDA and at the same time made a finding on the accused's knowledge based on direct evidence; (iv) failure of the judge to consider the failure of the prosecution to call the accused's wife, Pritiba, being the registered owner of the motorcycle and who, according to the accused, was friends with Aiza (allegedly the person whose name was on the brown paper bag); (v) the failure of the investigating officer to investigate Pritiba's knowledge of the brown paper bag and her relationship with Aiza; and (vi) the judge's failure to sufficiently appreciate the accused's defence.

Arguments

By The Accused

[12] At the hearing of the appeal, learned counsel for the accused had focused his arguments mainly on the first issue that is on the judge's misdirection and error on the finding of material facts.

[13] In his arguments, learned counsel pointed out to this court a series of errors that were made by the judge in her grounds:

(i) first, at para. 8 on the background facts of the case, the judge had stated that the case involved two types of dangerous drugs which are methamphetamine with a net weight of 73.91g and heroin with monoacetylmorphines with a net weight of 2.25g when the present case only involved one type of dangerous drugs, methamphetamine with a net weight of 111.32g:

> [8] Pada 14.7.2022, jam lebih kurang 3.52 petang, SP5 telah menghantar barang kes ke Jabatan Kimia Malaysia dan telah diterima oleh SP1 (Puan Harlisa binti Haidir Harminder – ahli kimia). SP1 telah membuat analisis atas barang kes dan

A mengesahkan ianya adalah *dadah berbahaya jenis Methamphetamine seberat 73.91 gram (ekshibit P9A(1-13)) manakala ekshibit P9C mengandungi dadah berbahaya jenis Heroin dan Monoacetylmorphines seberat 2.25 gram.* SP1 juga telah menyediakan laporan kimia (ekshibit P8). (emphasis added)

B (ii) second, at para. 26, the judge described the drugs as having been found in the trousers worn by the accused and in a bag when the drugs were actually found in a brown paper bag in the front basket of the motorcycle:

C [26] Mahkamah ini setelah menilai keterangan yang dikemukakan di dalam kes ini dan mendapati *tindakan OKT menyimpan dan membawa pada badannya dalam seluar yang dipakai ketika di ditangkap dan bersama satu beg* yang mengandungi dadah berhampiran dengannya itu adalah tergolong di bawah takrifan "pengedaran" di bawah Seksyen 2 Akta Dadah Berbahaya 1952 bagi Methamphetamine yang dinyatakan dalam pertuduhan.

D (emphasis added)

(iii) third, the judge's finding at that paragraph had led the learned judge to an erroneous finding on the act of trafficking under s. 2 of the DDA when her mind was focused on drugs allegedly found in the accused's trousers and bag, when they were actually found in a brown paper bag

E in the basket of the motorcycle; and

(iv) fourth, at para. 40 Part E on the pronouncement of decision after conclusion of the trial, the judge stated that after evaluating the evidence of the defence, she found that the accused had failed to raise a reasonable doubt on the issue of possession under the "three charges" when there

F is only one charge in the present case:

G [40] Setelah meneliti dan menimbangkan keterangan pihak pembelaan, Mahkamah mendapati keterangan pihak pembelaan tidak menimbulkan sebarang keraguan munasabah terhadap kes pendakwaan bahawa sebenarnya OKT mempunyai milikan atas barang kes dadah *seperti di dalam ketiga-tiga pertuduhan.* Mahkamah juga mendapati OKT gagal menimbulkan sebarang keraguan terhadap dapatan milikan dan pengetahuan dadah ke terhadapnya serta pengedaran seperti yang ditakrifkan di bawah Seksyen 2 ADB 1952. (emphasis added)

H **[14]** Reference was made to the decisions in *PP v. Sah Chin Chong* [2018] CLJU 682; [2018] 1 LNS 682; [2018] 6 MLJ 505; *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705; [1996] 1 MLJ 209; and *Tompo Yara v. PP* [2017] CLJU 89; [2017] 1 LNS 89; [2017] 2 MLJ 366. In all those cases, the court held that a misdirection in assessing material evidence will cause prejudice

I and miscarriage of justice to the accused.

By The Prosecution

[15] The prosecution argues that the entire grounds when read in full, shows that notwithstanding the errors of fact committed by the judge, she had actually deliberated on and evaluated the facts of the present case at paras. 11-14 and 25 to 32 (with exception to para. 26) that is, the accused was seen riding a motorcycle, he fell from that motorcycle after it collided with another vehicle, he was apprehended and a brown bag containing the impugned drugs were found, the drugs were confirmed by the chemist to contain methamphetamine with the net weight as per the charge, the accused had possession of the drugs and had committed the act of trafficking.

[16] It was also argued that the error of facts at para. 8 of the grounds cannot be held against the judge as it was a reproduction of the facts erroneously stated by the prosecution. In any case, para. 8 only serves to set out the background facts of the case and is not so crucial when compared to the actual evaluation of the facts which was correctly undertaken by the judge.

[17] Therefore despite the errors, the general evaluation of facts, evidence and the corresponding findings by the judge were correct and should be accepted by the court. In any event, this court is not barred from evaluating all the evidence and making its own findings since an appeal operates as a rehearing. Reference was made to a decision of this court in *Roichan Maasum v. PP* [2022] CLJU 129; [2022] 1 LNS 129; [2022] MLJU 99.

[18] In that case, the trial judge had made an error in stating at one part, specifically para. 21 in the grounds of decision that the impugned drugs were found in the kitchen when it was actually found in the third room of the premises. One of the arguments raised for the appellant was that the trial judge made an error on the evaluation of facts. In dismissing this argument, the Court of Appeal was satisfied that at five other parts of the grounds of decision, the trial judge had correctly referred to the facts that the drugs were found in the third room. Thus, the Court of Appeal regarded the misstatement of fact as just an oversight:

> [36] Counsel for the appellant also submitted that the trial judge committed an error of fact at paragraph 21 of the grounds of judgment when the trial judge stated that the drugs were found in the kitchen which in fact it was recovered in the 3rd room of the house. Having perused the grounds of judgment in totality, we are of the view that the statement at paragraph 21 about the recovery of the drugs in the kitchen was an oversight by the trial judge. Other than paragraph 21, the trial judge did address his mind and mentioned about the drugs was found in the 3rd room. This can be seen in the following paragraphs:

A (i) Paragraph 8:

Apabila pemeriksaan dijalankan ke atas bilik ke 3 [seperti yang dirujuk dalam P46 (rajah kasar) dan gambar P11 (15)] SP2 telah menjumpai 1 beg kertas berwarna putih dengan tulisan New Life Style (P29(A)) di dalamnya mengandungi 4 paket plastic lutsinar
B mengandungi bahan disyaki dadah shabu ...

(ii) Paragraph 30:

Peguam bela Tertuduh turut membangkitkan isu bahawa Tertuduh sebenarnya tiada akses ke atas Bilik Ketiga di mana dadah dalam pertuduhan (P2) tersebut dijumpai. Ini kerana tiada juga
C pemantauan yang dibuat oleh pihak polis ke atas rumah tersebut sebelum tangkapan dilakukan dan tiada keterangan yang menunjukkan Tertuduh menghuni bilik tersebut dan tiada barang peribadi Tertuduh yang dirampas dari bilik tersebut.

(iii) Paragraph 31:

D Dalam premis yang sama, peguam bela Tertuduh turut membangkitkan isu kewujudan seorang individu bernama Supriadi yang di katakan menyewa bilik di mana dadah dijumpai di rumah tertuduh. Oleh demikian, Tertuduh dihujahkan hanya menyewa rumah tersebut tetapi tidak mempunyai kawalan keseluruhan ke
E atas dadah yang dijumpai dalam Bilik Ketiga tersebut ...

(iv) Paragraph 36:

... Keadaan yang sama bagi dadah yang dijumpai dalam Bilik Ketiga rumah tersebut di mana dadah tersebut juga tersembunyi di dalam beg kertas "New Life Style" seperti yang dibincangkan
F sebelum ini.

(v) Paragraph 58:

Semasa menyewa di rumah yang dijumpai dadah tersebut, menurut Tertuduh dia tidak pernah masuk ke dalam Bilik Ketiga tersebut kerana bilik tersebut kerana bilik tersebut disewakan
G kepada Supriadi dan Tertuduh telah memberikan Salinan pendua kunci kepada Supriadi semasa bilik tersebut disewa.

Deliberations And Findings

[19] The evaluation of the issue raised in this appeal necessitates this court
H to touch on the duty of a trial judge in a criminal trial. As held by the Federal Court in *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734; [2003] 2 MLJ 65, the court as a trier of fact must subject the prosecution's evidence to maximum evaluation:

It therefore follows that there is only one exercise that a judge sitting
I alone under s. 180 of the CPC has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the

accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative, then no *prima facie* case has been made out, and the accused would be entitled to an acquittal.

[20] Later in *Magendran Mohan v. PP* [2011] 1 CLJ 805; [2011] 6 MLJ 1, the Federal Court described how that maximum evaluation is to be done:

[44] The test at the end of the prosecution's case is '*prima facie* case' based on a maximum evaluation of evidence. The evidence has to be scrutinised properly and not perfunctorily, cursorily or superficially. If the evaluation of the evidence results in doubts in the prosecution's case, then a *prima facie* case has not been made out. The defence ought not to be called merely to clear or clarify such doubts.

[21] Thus, the trial court must direct its attention to all the facts and evidence presented in the case. There must be attention to detail, accuracy and relevance. The facts must be evaluated in its proper context and it is not the function of the court to indulge in speculation or conjecture without proper consideration of the evidence. In *Norisman Rozali v. PP* [2014] CLJU 1202; [2014] 1 LNS 1202; [2015] 3 MLJ 125, the Court of Appeal held:

[17] It is said that a judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accept or reject the whole or any part of the evidence placed before him. He must when deciding whether to accept or to reject the evidence of a witness, test it against relevant criteria. That is judicial appreciation of evidence. (See *Lee Ing Chin @ Lee Teck Seng & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19).

[22] In *Deepanraj Subramanian v. PP* [2015] 3 CLJ 439; [2016] 1 MLJ 413, the Court of Appeal expressed the following:

[63] Judgment writing is a matter of individual style and the need for a speaking judgment needs no emphasis. It is an elementary principle of fairness that parties must not only be given a fair opportunity of being heard, but also appraised of how and why a judge has reached his decision. Section 308 of the CPC speaks of "grounds of decision" which means a reasoned judgment on the facts and the law and not merely the conclusion arrived at. What amounts to a speaking judgment varies from case to case. Mere regurgitation or narration of the facts and a statement of the law does not amount to a speaking judgment.

[64] Shaikh Daud JCA sitting in the Federal Court in *Ganapathy Rengasamy v. PP* [1998] 2 CLJ 1; [1998] 2 CLJ 10i; [1998] 2 MLJ 577 at p. 585 found the grounds of judgment of the learned judge far from satisfactory in that they do not convey a 'speaking' judgment'. The judgment consists substantially of reproduction of the prosecution's witnesses' testimonies in the form of questions and answers. The learned judge failed to analyse or assess these testimonies. He merely set them out and presumably accepted them without question. He has not set out

A the defence of the appellant with a view to assessing it, nor has he tested the defence by comparing it with the evidence adduced by the prosecution.

[23] At the end of the trial, the duty of the court is as expressed by the oft-quoted decision of the Federal Court in *Md Zainudin Raujan v. PP* [2013] B 4 CLJ 21; [2013] 3 MLJ 773; [2013] 3 MLRA 351:

> At the conclusion of the trial, s. 182A of the Criminal Procedure Code imposes a duty on the trial court to consider all the evidence adduced before it and to decide whether the prosecution has proved its case beyond reasonable doubt. The defence of the accused must be considered C in the totality of the evidence adduced by the prosecution, as well as in the light of the well-established principles enunciated in *Mat v. PP* [1963] CLJU 82; [1963] 1 LNS 82; [1963] 1 MLJ 263 with regard to the approach to be taken in evaluating the evidence of the defence.

[24] Coming back to the judge's grounds, whilst we can agree that there D could have been a genuine mistake committed by the judge when she, perhaps blindly, copied and pasted the prosecution's version of facts at para. 8 onto her grounds, that mistake cannot, however, escape criticism. It must be said that setting out the correct background facts in a written grounds of decision is as important as any other part of the decision, where the evaluation of facts are done. An elucidation of the background facts sets the E basis upon which the entire case and all its evidence are considered, and it indicates the trial judge's understanding and focus on the case before her. Thus, to confuse the facts of a case with some other unrelated case would suggest that the judge did not properly address her judicial mind to the case before hand even before commencing with her evaluation of the evidence.

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[25] Continuing on and more critically, as regards to para. 26 of the judge's grounds, we find that the evaluation of facts there had no place at all in this case. The prosecution's version of the arrest was that the drugs were found in a brown paper bag in the basket of the motorcycle and not on the body of the accused and in a bag. It appears to this court that in preparing her G grounds of decision, the judge's mind and attention had steered away from the facts of the case to some other unknown case. It is clear that the judge failed to detect this glaring anomaly when signing off on the decision. We would expect the judge to carefully proofread the entire draft to check for mistakes before signing off on the decision. The fact that para. 26 was H constructed as it was and remained so in the final and signed copy of the grounds suggests that she had failed to do so.

[26] Paragraph 26 brings about a material contradiction in the judge's overall evaluation of the facts and had prejudiced the accused since her finding at that paragraph was that the drugs were found on the accused's I body. Although the judge had, as argued by the prosecution, made correct reference and evaluation to the facts of the case at no less than seven other

parts of the grounds, yet there stands an evaluation and finding of facts totally unrelated to the case thereby presenting two conflicting scenarios in the same judgment. This court is of the view the nature of the error committed here is not one that can be considered as immaterial or as a mere oversight.

[27] Unlike the case of *Roichan Maasum* (*supra*) where the mistake was on which room the drug was found, here, the error is on the finding of drugs on the accused's body which would have naturally impacted the judge's mind on the finding of possession. In fact, she went on to find that since the drugs were found on the accused's body and in a bag, the accused had met the threshold on the meaning of trafficking under s. 2 of the Act.

[28] This manifest and material error amounted to a clear misdirection of crucial facts and had caused injustice to the accused. As expressed by the Court of Appeal in *Sah Chin Chong* (*supra*):

> [30] The grounds of judgment of the learned judge as well as the records of the proceedings do not indicate that His Lordship had undertaken a proper, adequate and correct judicial appreciation and scrutiny of the entire evidence on the crucial issue of provocation in order to ascertain the truth of the matter. This Court in the case of *PP lwn. Losali & Satu Lagi Dan Satu Rayuan Lain* [2010] 8 CLJ 560 explained the law on the role of an appellate court in dealing with findings by a trial judge which depended on an assessment of credibility and reliability of a witness wherein it was held by Raus JCA (as His Lordship then was) that such findings should not be reversed by the appellate court unless it could be shown that the decision was against the weight of evidence or a misdirection had occurred that had caused an injustice.

[29] Finally, on the judge's summation and conclusion at para. 40 of the grounds. At the end of the defence case, the trial court is tasked with the duty to find whether, as in this case, the accused had succeeded to rebut the presumption of possession and knowledge under s. 37(d) of the DDA on the balance of probabilities and to raise a reasonable doubt against the prosecution's case on the issue of *mens rea* act of trafficking. Contrary to that, the judge instead made a finding that the accused had failed to raise a reasonable doubt on the finding of possession under "all three charges".

[30] To reiterate, the accused here was charged with only a singular offence, not three. What three charges the judge was referring to remains unclear. What is clear is that the three charges cannot refer to the present case. Again, had she undertaken proper review of her draft, the judge would have found that this conclusion is not grounded on any facts in the case. This reflects a failure in the discharge of her duty as a trier of fact to undertake a proper, adequate and accurate judicial appreciation of the facts and evidence. Ultimately, her decision to convict and sentence the accused on the three offences was totally baseless and divorced from the case before her.

[31] Whilst this court accedes to the fact as a human no judge is infallible, yet great care must be taken to ensure that in drafting grounds of decision, the correct facts are put into perspective since all deliberations and findings will ultimately affect the fate of the accused person. It would not be an exaggeration to state that in criminal trials, more so where it involves capital punishment, the life and death of an accused greatly depends not only on the critical evaluation of all evidence, but also on the words chosen and put together by the trial judge to correctly and accurately convey that evaluation and ultimately his or her decision. In the end the accused is entitled to know with sufficient clarity why the trial court decided to convict and sentence him for the offence. Referring again to the decision in *Norisman Rozali* (*supra*):

> [18] It is incumbent on the part of the learned trial judge to indicate through his judgment his evaluation of the evidence. It is not sufficient to merely say 'I accept' or 'I believe' the evidence of the witness. Reasons and analysis of the evidence must be shown (*Murugiah v. Public Prosecutor* [1940] CLJU 59; [1941] 1 MLJ 176). In the instant appeal, the learned trial judge did not even say those words but merely narrated the evidence of SP6, instead. Such failure merits appellate intervention.

[32] Failure by trial judges to properly state and direct their judicial mind to the facts have in the past caused many a conviction and sentence to be set aside on grounds that there has been a serious misdirection and misappreciation of facts. In the present case, the manifest and serious errors had affected the credibility and reliability of the judge's decision and had denied the accused an evaluation of the case in accordance with the law. On the point of credibility, reference is made to the decision of the Court of Appeal in *Noor Azman Abidin v. PP* [2014] 1 CLJ 58; [2013] MLJU 703; where the following was expressed:

> [12] The hallmark of judgment writing in criminal case is achieved only when there has been a just and fair assessment of the defence story as long as it is not inherently incredible taking into consideration that it is for the prosecution to prove its case beyond reasonable doubt at the prosecution case as well as the defence stage, notwithstanding the fact where the law may require the defence to rebut the charge on balance of probabilities. Lack of proper assessment will in actual fact compromise the integrity of the decision-making process, making the conviction unsafe.

[33] Whilst this court accepts as an established principle of judicial power as decided by the Federal Court in *Ahmad Najib Aris v. PP* [2009] 2 CLJ 800; [2009] 2 MLJ 613 and *PP v. Azilah Hadri & Anor* [2015] 1 CLJ 579; [2015] 1 MLJ 617 that an appeal is a continuation of proceedings by way of rehearing and an appeal court may subject the evidence to a total re-evaluation and critical re-examination, we do not find that in this appeal that there has just been failures in evaluating the evidence.

[34] The failure here is more fundamental. Although there were discussions and evaluation of evidence related to the present case, yet the fact that the evaluation was caught intertwined with some other unrelated facts, and finally a decision to convict the accused was made based on the accused's failure to raise reasonable doubts on the three charges amounted to serious misdirections. There was a clear failure of duty by the judge to evaluate the correct facts and evidence, not only in the process of decision-making but ultimately in the decision itself.

Decision

[35] For those reasons, we find no hesitation to set aside the conviction and sentence. So ordered.